

REMARKS

1. Summary of the office action

In the office action mailed October 31, 2008, (i) the Examiner provisionally rejected claims 67-87 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 70-80 of co-pending Application No. 10/602,410, (ii) the Examiner rejected claims 67, 78-81, 86, and 87 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,112,206 (Morris), (iii) the Examiner rejected claims 68-77 under 35 U.S.C. § 103(a) as being unpatentable over Morris in view of U.S. Patent No. 6,611,740 (Lowrey), and (iv) the Examiner rejected claims 82-85 under 35 U.S.C. § 103(a) as being unpatentable over Morris in view of Official Notice. Applicant respectfully traverses these rejections.

2. Amendments and status of the claims

Applicant has amended claims 67 and 86, and cancelled claims 55-66, 84, and 87. Claims 67-83, 85, and 86 are currently pending. Of the pending claims, claim 67 is independent.

3. Response to claim rejections based on obviousness-type double patenting

The Examiner provisionally rejected claims 67-87 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 70-80 of co-pending Application No. 10/602,410.

Applicant respectfully submits that the Examiner erred in making the provisional double patenting rejection because U.S. Patent Application No. 10/602,410 has issued as U.S. Patent No. 6,856,754 and thus is no longer pending, and because U.S. Patent Application No. 10/602,410 never included claims 70-80. Applicant respectfully requests that the Examiner withdraw the double patenting rejection of claims 67-87 as being unpatentable over claims 70-80 of U.S. Patent Application No. 10/602,410.

4. Response to claim rejections under 35 U.S.C. § 102

The Examiner rejected claims 67, 78-81, 86, and 87 under 35 U.S.C. § 102(e) as being anticipated by Morris. Under M.P.E.P. § 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Applicant has amended independent claim 67 to include a portion of elements that were recited in claims 86 and 87. Applicant submits that Morris does not teach or suggest each and every element recited in claim 67, as amended.

At a minimum, Morris does not teach or suggest *a user interface that displays a status of whether the information replicated by the replicating device is up-to-date, possibly outmoded, or outmoded*, as now recited in claim 67. With respect to this element of claim 67, Morris, at best, discloses that each portable data collection terminal 112 includes a manual input system such as a keyboard 113 and a display 115, and the display 115 displays a received list of authorized programs and a menu. See, Morris, column 8, lines 65-67, column 9, lines 1-10, column 12, lines 56-63, and Figure 3. Applicant submits that a display displaying a list of authorized programs and menus does not amount to *a user interface that displays a status of whether the information replicated by the replicating device is up-to-date, possibly outmoded, or outmoded*, as now recited in claim 67.

In the office action, the Examiner stated Morris teaches a user interface that displays a status of the replicated information, and wherein the program instructions further comprise instructions executable by the processor to prompt a user to determine if the replicated information on the replicating device should be updated via a remote network. The Examiner cited to Morris, column 18, lines 38-60. See, office action, page 5, second paragraph. This cited portion of Morris describes steps of a flow diagram illustrated in Figure 12 of Morris. Figure 12

illustrates the operation of the mobile access server (MAS) 331. In rejecting claim 67, the Examiner identified the MAS 331 as the replicating device recited in this claim, not the vehicle diagnostic device that communicates with the replicating device. Applicant submits that the operation of MAS 331, disclosed by Morris at column 18, lines 38-60, does not disclose or suggest operation of a vehicle diagnostic device or that a vehicle diagnostic device includes a *user interface that displays a status of whether the information replicated by the replicating device is up-to-date, possibly outmoded, or outmoded*, as now recited in claim 67.

Furthermore, in the office action, the Examiner stated that Morris teaches the user interface displaying a status that indicates whether the replicated information is up-to-date, possibly outmoded, or outmoded, and the Examiner cited to Morris, column 19, lines 27-50. See, office action, page 5, third paragraph. This cited portion of Morris, at best, discloses (i) the MAS 331 transmitting requested information to a calling data collection terminal 312, (ii) the calling terminal 312 using the data upon receipt, and (iii) if the requested information is not available, the calling terminal 312 placing calls for the information until it is received, placing a limited number of calls and performing another function or using default information if the requested information is not received. Applicant submits that Morris, column 19, lines 27-50, does not disclose or suggest *a user interface that displays a status of whether the information replicated by the replicating device is up-to-date, possibly outmoded, or outmoded*, as now recited in claim 67.

Because Morris does not teach or suggest each and every element recited in claim 67, as amended, Morris fails to anticipate claim 67 under 35 U.S.C. § 102(e), and Applicant submits that claim 67 is therefore in condition for allowance. Additionally, without conceding the assertions made by the Examiner regarding dependent claims 78-81 and 86, Applicant submits

that dependent claims 78-81 and 86 are allowable for at least the reason that each of these claims depends from allowable claim 67.

Applicant has cancelled claim 87, and thus the rejection of claim 87 under 35 U.S.C. § 102(e) is therefore moot. Applicant respectfully requests that the Examiner withdraw the rejection of claim 87 under 35 U.S.C. § 102(e).

5. Response to claim rejections under 35 U.S.C. § 103(a)

a. Claims 68-77

The Examiner rejected dependent claims 68-77 under 35 U.S.C. § 103(a) as being unpatentable over Morris and Lowrey. Each of these claims depends from independent claim 67 and necessarily includes each and every limitation of claim 67. As stated above, Morris does not teach or suggest *a user interface that displays a status of whether the information replicated by the replicating device is up-to-date, possibly outmoded, or outmoded*, as now recited in claim 67. Without conceding the assertions made by the Examiner regarding dependent claims 68-77, Applicant submits that Lowrey fails to make up for this deficiency of Morris and thus Morris and Lowrey fail to lead to the invention of claims 68-77. Applicant submits that claims 68-77 are in condition for allowance.

b. Claims 82-85

The Examiner rejected claims 82-85 under 35 U.S.C. § 103(a) as being unpatentable over Morris in view of Official Notice.

(i) Claim 82

In rejecting claim 82, the Examiner stated Morris teaches all the limitations of claim 81, but does not specifically teach the first wireless access device and the second wireless access device each carry out communications with the replicating device according to an IEEE 802.11

standard. In rejecting claim 82, the Examiner took official notice that it was well-known in the art that wireless communications between various devices are based on the popular IEEE 802.11 standard (i.e., 802.11(b) "WiFi").

Applicant respectfully traverses the Examiner's official notice. Applicant submits that the Examiner erred by not specifying what "the art" is. As it stands, the term "the art" is ambiguous and overbroad. If the Examiner maintains the rejection of claim 82 using official notice, Applicant respectfully requests that the Examiner identify what "the art" is so that the record is clear and so that Applicant can evaluate whether the official notice was well-known in "the art" at the time of Applicant's invention.

Next, claim 82 recites "wherein the first wireless access device and the second wireless access device each carry out communications with the replicating device according to an IEEE 802.11 standard." Claim 82 depends from independent claim 67 and necessarily includes all of the elements recited in claim 67. In this regard, the replicating device of claim 82 is located on a movable land-based vehicle. Even if it is assumed, for the sake of argument, that it was well-known in the art that wireless communications between various devices are based on an IEEE 802.11 standard, Applicant submits that the Examiner erred in taking official notice for claim 82 because the record does not show that it was well-known, at the time of Applicants invention, to use an IEEE 802.11 standard in a replicating device located on a movable land-based vehicle.

Additionally, since claim 82 depends from independent claim 67 and necessarily includes all of the limitations of claim 67, Applicant submits that the official notice taken by the Examiner for claim 82 fails to make up for the deficiency of Morris in that Morris and this official notice do not reasonably lead to a vehicle diagnostic device comprising ... a user interface that displays a status of whether the information replicated by the replicating device is

up-to-date, possibly outmoded, or outmoded. Because the Examiner erred in taking official notice for claim 82, and because Morris and the official notice taken by the Examiner for claim 82 do not lead to each and every element of claim 82, Applicant submits that claim 82 is in condition for allowance.

(ii) **Claim 83**

In rejecting claim 83, the Examiner stated Morris teaches all the limitations of claim 81, but does not specifically teach the first wireless access device and the second wireless access device each carry out communications with the replicating device according to a *Bluetooth specification*. (Emphasis added). In rejecting claim 83, the Examiner took official notice that it was well-known in the art that wireless communications between various devices are based on the popular *IEEE 802.11 standard* (i.e., 802.11(b) "WiFi"). (Emphasis added).

Applicant respectfully traverses the Examiner's official notice taken for claim 83. Applicant submits that the Examiner erred by not specifying what "the art" is. As it stands, the term "the art" is ambiguous and overbroad. If the Examiner maintains the rejection of claim 83 using official notice, Applicant respectfully requests that the Examiner identify what "the art" is so that the record is clear and so that Applicant can evaluate whether the official notice was well-known in "the art" at the time of Applicant's invention.

Applicant further submits that the Examiner erred in rejecting claim 83 by taking official notice of an alleged fact that is not recited in claim 83. In particular, claim 83 recites "wherein the first wireless access device and the second wireless access device each carry out communications with the replicating device according to a *Bluetooth specification*." (Emphasis added). Even if it is assumed, for the sake of argument, that it was well-known in the art that wireless communications between various devices are based on an *IEEE 802.11 standard*,

Applicant submits that such knowledge, in combination with Morris, does not reasonably lead to wherein the first wireless access device and the second wireless access device each carry out communications with the replicating device according to a *Bluetooth specification*, as recited in claim 83.

Additionally, since claim 83 depends from independent claim 67 and necessarily includes all of the limitations of claim 67, Applicant submits that the official notice taken by the Examiner for claim 83 fails to make up for the deficiency of Morris in that Morris and this official notice do not reasonably lead to a vehicle diagnostic device comprising ... a user interface that displays a status of whether the information replicated by the replicating device is up-to-date, possibly outmoded, or outmoded. Because the Examiner erred in taking official notice for claim 83, and because Morris and the official notice taken by the Examiner for claim 83 do not lead to each and every element of claim 83, Applicant submits that claim 83 is in condition for allowance.

(iii) Claim 84

Applicant has cancelled claim 84 because it was identical to claim 82. Applicant submits that the rejection of claim 84 under 35 U.S.C. § 103(a) is moot, and Applicant respectfully requests that the Examiner withdraw the rejection of claim 84 under 35 U.S.C. § 103(a).

(iv) Claim 85

In rejecting claim 85, the Examiner stated Morris teaches all the limitations of claim 81, but does not specifically teach the first wireless access device and the second wireless access device each carry out communications with the replicating device according to a wireless local area network (WLAN) specification. In rejecting claim 85, the Examiner took official notice that

it *is* well-known in the art that wireless communications based on a WLAN specification such as the IEEE 802.11 standard is widely used in wireless technologies. (Emphasis added).

Applicant respectfully traverses the Examiner's official notice taken for claim 85. Applicant submits that the Examiner erred by not specifying what "the art" is. As it stands, the term "the art" is ambiguous and overbroad. If the Examiner maintains the rejection of claim 85 using official notice, Applicant respectfully requests that the Examiner identify what "the art" is so that the record is clear and so that Applicant can evaluate whether the official notice was well-known in "the art" at the time of Applicant's invention.

Applicant submits that the Examiner erred by stating that the alleged fact *is* well-known in the art. Applicant submits that such alleged fact does not have any bearing as to what was known to persons having ordinary skill in art pertaining to Applicant's invention at the time of Applicant's invention.

Next, claim 85 recites "wherein the first wireless access device and the second wireless access device each carry out communications with the replicating device according to a wireless local area network (WLAN) specification." Claim 85 depends from independent claim 67 and necessarily includes all of the elements recited in claim 67. In this regard, the replicating device of claim 85 is located on a movable land-based vehicle. Even if it is assumed, for the sake of argument, that it was well-known in the art that wireless communications between various devices are based on an IEEE 802.11 standard, Applicant submits that the Examiner erred in taking official notice for claim 85 because the record does not show that it was well-known, at the time of Applicants invention, to use a WLAN specification in a replicating device located on a movable land-based vehicle.

Additionally, since claim 85 depends from independent claim 67 and necessarily includes all of the limitations of claim 67, Applicant submits that the official notice taken by the Examiner for claim 85 fails to make up for the deficiency of Morris in that Morris and this official notice do not reasonably lead to a vehicle diagnostic device comprising ... a user interface that displays a status of whether the information replicated by the replicating device is up-to-date, possibly outmoded, or outmoded. Because the Examiner erred in taking official notice for claim 85, and because Morris and the official notice taken by the Examiner for claim 85 do not lead to each and every element of claim 85, Applicant submits that claim 85 is in condition for allowance.

6. Conclusion

Applicant believes that all of the pending claims have been addressed in this response. However, failure to address a specific rejection or assertion made by the Examiner does not signify that Applicant agrees with or concedes that rejection or assertion.

For the foregoing reasons, Applicant submits that claims 55-66, 84 and 87 are in condition for allowance. Therefore, Applicant respectfully requests favorable reconsideration and allowance of all the pending claims.

Respectfully submitted,

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/David L. Ciesielski
David L. Ciesielski
Reg. No. 57,432